

**TESTIMONY OF CHARLES S. HOUSER
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
TRIVERGENT COMMUNICATIONS, INC.
Before the
SENATE COMMERCE COMMITTEE
SUBCOMMITTEE ON COMMUNICATIONS
Concerning
THE DEVELOPMENT OF COMPETITION IN THE LOCAL TELECOMMUNICATIONS
SERVICES MARKET**

NOVEMBER 4, 1999

Good morning Mr. Chairman and members of the Committee. My name is Charlie Houser. Since 1982, I have been involved in the telecommunications industry as an entrepreneur, investor, executive, board member, and/or CEO of several successful telecommunications companies. I have served as Chairman of the Telecommunications Resellers Association, an organization that represents 800 companies involved in the resale of telecommunications services - a multi billion-dollar industry led by an estimated \$13 billion long distance resale segment. I have also served on the board of directors of CompTel, an association representing over 300 competitive telecommunications companies. During this time I have been fortunate to see huge positive changes in the long distance market and the initial positive changes in the local services market.

Today, I serve as the Chairman and Chief Executive Officer of TriVergent Communications, Inc. ("TriVergent"). TriVergent is a privately held Integrated Communications Provider. TriVergent provides business and residential consumers with a wide range of communications products and services, including DSL, high-speed Internet, Web hosting and design, local exchange, long-distance, and data-integration products. The company is building an 18-switch ATM-backbone, high-speed data network that will cover 26 southeastern metropolitan areas, including many second and third tier markets. TriVergent, with a capital expenses budget of \$350,000,000, owes its existence to the Telecommunications Act of 1996 ("1996 Act" or "Act") and is making huge economic investment and

employing the efforts of hundreds of partners to bring about the changes to the local telecommunications landscape that Congress intended by the enactment of the 1996 Act.

A. INTRODUCTION

Thank you for the opportunity to discuss the challenges facing the development of local competition. To explain the position of TriVergent Communications further, let me provide the Committee with some additional background. I think we can all agree that, generally speaking, monopolies do not best serve the public interest. Monopolies do not adequately respond to or meet customer demand; they offer few service choices; they generally do not innovate; they do not price competitively; and they have a history of using their market power to squash new entrants. Over 20 years ago, federal policy makers ended AT&T's monopoly in the provision of long distance services and the manufacturing of telecommunications equipment. Under the watchful eye of Judge Greene and the guidance of the FCC, the results speak for themselves: over 800 new competitors have entered the long distance market, prices have dropped dramatically, new services constantly come to market, and huge amounts of capital are being expended to upgrade plant with the latest technologies. For the life of me, I don't understand why the opening of the local markets to competition can't be handled in the same way.

The 1996 Act, which many of you worked hard to bring about, was designed to bring the same benefits of competition to the local telephone marketplace. The Act's passage was supported equally by the RBOCs and other ILECs, the long distance companies, and by the new entrants into local markets, the competitive local exchange carriers ("CLEC") – companies like TriVergent.

The 1996 Act focused on turning a sector of the economy serviced by monopolies, the local telephone markets for voice, data, and video services, into a competitive market. Accordingly, the 1996 Act requires the RBOCs to open the local market to competition first, and after the local market is opened, then - and only then- do they have the right to enter the long distance market. At the time of the passage of the Act, Congress in its wisdom recognized that if the RBOCs were allowed into long

distance first, they would have no incentive to open their local networks to competitors and the legislation would not achieve its purpose.

B. THE STATUS OF LOCAL TELECOMMUNICATIONS COMPETITION

Three and a half years after its passage, there is evidence of the development of competition envisioned by the Act. The good news is that well over one hundred and fifty CLECs have entered the local market since the passage of the Act. Many of these companies, like TriVergent, are rapidly building high-speed voice and data networks to serve residential and business customers. Collectively, CLECs have increased their market share each of the past two years, and now provide services to approximately 3% of the local services market. Furthermore, CLECs have already deployed approximately 20% of the fiber optic cable capacity available in the United States. The bad news is that the RBOCs and ILECs have fought the process tooth and nail and have prevented vibrant, open competition.

TriVergent and other CLECs offering local services are also making particular progress in deploying advanced, broadband technologies. Along with its local, long distance and internet service offerings, TriVergent will deploy advanced DSL service throughout the southeastern United States over the next two years. When combined with the efforts of other like-minded CLECs, over two-thirds of the nation's population will be able to take advantage of this remarkable service in the next two to three years.

The Act is beginning to work, but I repeat it is only beginning to work. CLECs are just beginning to establish a presence in the market and bring local service to business and residential customers for lower prices. Additionally, CLECs are bundling local service with other offerings including long distance, internet, and DSL services. Because of the threat of competition, RBOCs and ILECs are being forced to develop better products and offer these products for better prices. Despite these gains, let me make certain that you understand that we are still a long way from the robustly

competitive local telecom marketplace that Congress envisioned at the time of the Passage of the 1996 Act. As I said earlier, after three years, CLECs serve only 3% of all the nation's local telephone service customers. As is apparent by this figure, while competition is growing, the market is far from a fully competitive model today.

There are several major reasons why the local telecommunications market still falls short of being fully competitive. CLECs and, more importantly, their customers, still encounter discriminatory and anti-competitive treatment from RBOCs and ILECs. RBOCs and ILECs, through delay tactics and other frustrating and, in some cases, illegal tactics, hamper efforts of CLECs to install their own facilities or interconnect these facilities with those of the RBOC or ILEC. Let me be clear on this one point - the most oppressive obstacle to local telephone competition is the RBOCs' and ILECs' refusal to really open their markets to competition, not just in word, but in deed. With adequate time I can cite dozens of examples.

In an effort to add a face to this message, consider the story of TriVergent. We began offering local and long distance services as a reseller in April of 1998 under the name of State Communications. In order to prevent any undo confusion, I will refer to the company as TriVergent. TriVergent set out to provide local and long distance telecommunications service to residential and small business customers, primarily through resale, in Kentucky, Tennessee, Louisiana, Alabama, South Carolina, Mississippi and Georgia. We were one of the largest CLECs in the country (in terms of number of residential customers) and one of the few alternative telephone companies targeting primarily the residential market. By March of 1999, TriVergent had enrolled over 100,000 customers on its local and long distance service. It is important to note that over 90% of TriVergent's customer base were of the residential consumer flavor. Our projections had us enrolling an additional 150,000 customers over the course of 1999. The bad news is that we have virtually abandoned our efforts in resale of local services to residential and small business customers after investing over \$18,000,000 to that effort.

During the eleven months from April of 1998 until March of 1999, we proved three things: (1)

customers wanted an alternative to BellSouth; (2) TriVergent could attract and provision huge numbers of customers; and (3) that BellSouth's reluctance to open and support its markets prevented resale from being a viable alternative to facility deployment for successful entry into the local services market. Unlike long distance, local resale as an entry strategy into the local services market is a dismal failure. In addition to totally inadequate discounts, in working with BellSouth we encountered the following difficulties:

NONRECURRING CHARGES AND FEES¹

FAILURE TO MEET FIRM ORDER CONFIRMATIONS²

INADEQUATE AND INCOMPLETE CUSTOMER SUPPORT SYSTEMS

DISCONNECTIONS AND INTERRUPTIONS IN SERVICE³

PROVISIONING DIFFICULTIES AND DELAYS⁴

INVOICE DISPUTES⁵

ILLEGAL INTERACTION BY BELL SOUTH WITH TRIVERGENT CUSTOMERS⁶

However, if you don't remember anything else about my presentation, please realize this:
The most important factor in explaining why resale is not a viable option, but in fact a dismal failure, as a means of entry into the local services market is the lack of an adequate wholesale discount and the refusal of the RBOCs to offer alternative pricing structures. That is, there remain consistent shortfalls between the wholesale discounts on local phone service and the minimum discounts needed to make local service resale a feasible long-term business.⁷ Again, resale of local phone service simply is not feasible as a stand-alone, long-term business strategy, especially for companies targeting residential customers. The proof is evident by the fact that we don't know of a single company successfully deploying resale of local service as a viable business strategy. The situation is insidious for two reasons. First, it nearly eliminates a key market entry channel for small business service providers. Unfortunately, we have witnessed several business failures in this arena. Second, it denies consumers the benefits of a healthy resale market – competition, innovation, and choice. Even when TriVergent approached BellSouth on numerous occasions to request more reasonable discounts in exchange for

volume and term commitments, BellSouth would not work with TriVergent or respond to proposals.⁸ The losers in this game are the residential and small business customers.

It is for these reasons that TriVergent has reevaluated its marketing plan in favor of deploying its own facilities with the objective of migrating its customers to these facilities. Unfortunately, we are experiencing similar problems interfacing with BellSouth.

In short, the antics of the ILECs and RBOCs severely constrain the CLEC's ability to bring consumers the products, services, better prices, and choices that are being promised them. Further, the RBOCs' and ILECs' efforts to persistently and continually litigate against the policies of the Federal Communications Commission (FCC) and state regulators, rather than work fairly with new market entrants has severely hampered the development of competitors and the competitive process. The continuing failure by ILECs to provide nondiscriminatory access to their networks and OSS functionalities stands as a major impediment of local service competition.

As a result, TriVergent and other CLECs continue to encounter obstacles when ordering loops, collocating in central offices⁹, and achieving number portability necessary to allow consumers to switch seamlessly to a CLEC. For example, under the section 2.1 of our interconnection agreement with BellSouth, BellSouth is obligated to respond to collocation space requests within 10 days of receipt of the request. We have 162 applications on file with BellSouth. Responses to the applications have ranged from 19 to 86 days with the average response time being approximately 50 days. These are issues the Committee should make a priority. The Committee should remedy these problems so that we achieve a fully competitive environment.

C. KEY COMPONENTS FOR FOSTERING COMPETITION

1. PRESERVE THE INTEGRITY OF THE 1996 ACT

For many years prior to the passage of the 1996 Act, RBOCs and ILECs worked with Congress to pass the legislation like the '96 Act. The RBOCs and ILECs were proponents of the Act and accepted its provisions. Despite their failure to live up to their obligations under the 1996 Act and

open their networks to competition, several of the RBOCs and ILECs now propose that they be granted exemptions from the Act's market-opening requirements. The RBOCs and ILECs are now arguing that they must be deregulated in order to encourage broadband deployment. In reality, the RBOCs and ILECs don't want to meet their obligations under the Act but want the ability to tilt the playing field in their favor by lobbying for "Regulatory Relief".

The ILECs' and RBOCs' argument that without such relief they do not have sufficient incentives to deploy advanced broadband services is preposterous. Contrary to their claims, the pace of broadband deployment is accelerating faster than ever before because of the passage of the Act. Companies like TriVergent are deploying broadband data services throughout the United States. These competitors are meeting consumer's demands by offering consumers access to technologies that the RBOCs and ILECs have long ignored.

The small but steady progress made by CLECs and other new market entrants has forced the RBOCs' and ILECs' hand. Only after competitors offered new services, the RBOCs and ILECs have been forced to offer new services to keep from losing customers. However, any decision to allow RBOCs Regulatory Relief regarding data services could crush competitive efforts in the data services arena and negatively impact competition in the local services arena, as well. As long as the ILECs and RBOCs hold a monopoly over the loop and other local network facilities used to carry voice, video and data calls, new market entrants must rely on pro-competitive legislation, regulation and the oversight of the FCC in order to survive. Allowing the ILEC or RBOC to exempt the parts of their networks from the unbundling requirements will destroy voice and data competition because competitors need collocation, access to the loop and other network facilities to provide competitive data services.

The balanced approach laid out by the Act has opened the door to hundreds of small businesses to compete in the local telecommunications marketplace. Three years of RBOC litigation and non-compliance with the Act is standing in the way of the growth of competition. Don't reward

anti-competitive behavior with a change of the ground rules under which the ILECs and RBOCs must operate.

2. KEEP THE PRO-COMPETITIVE REGULATORY FRAMEWORK

The 1996 Act gives great impetus for investment in telecommunications facilities because it opens markets to competitors. In three years, the Act has produced tens of billions of dollars of new investment. Facilities-based CLECs are rapidly building new, sophisticated networks, and ILECs are upgrading their old ones. The beneficiaries of these facilities build-outs will be customers, who finally have suppliers who want to meet their demands, and equipment vendors, who are bringing out new products every day. So long as competition is allowed to develop and gain steam, this investment is sure to continue. However, the opposite is also true. Any legislative activity to alter the Act, especially to roll back pro-competitive rules, could freeze this investment activity. Deregulation the ILECs and RBOCs claim as an entitlement under the Act was to be a product of the local competition the statute was intended to engender. The continued need for regulatory oversight of the local market cannot be overstated. The burdens associated with such oversight flow directly from the ILECs' and RBOCs' failure to have met their statutory responsibilities more than three years following enactment of the 1996 Act.

SUPPORT THE FCC AND ITS PRO-COMPETITIVE EFFORTS

With the proper framework and oversight, competition in the long distance market has become a reality. For the same robust competition to develop in the local arena, the same framework and, more importantly, oversight mechanisms, must be in place. Give the FCC the resources to enforce its rules. Expand the FCC's legal authority to impose penalties on the ILECs and RBOCs for failing to open up their local networks and/or impede CLECs' progress. Urge the FCC to complete its universal service proceeding; without subsidies that are explicit and available to competitors, it will be

virtually impossible to bring competition to rural areas. Support the FCC's efforts to promote reasonable rates and fair terms and conditions for collocation as excessive rates and unreasonable terms have become important barriers to competitive entry into data service markets. Support the FCC's efforts to promote full implementation of the interconnection, collocation, unbundling and resale provisions of the Act.

Regulatory efforts should be focused on eliminating the many remaining obstacles to the competitive provision of local exchange service, such as inadequate discounts. As we all know, competition promotes innovation and the efficient deployment and use of telecommunications facilities, which generates increased research and development and positively impacts the growth of the market for telecommunications services.

D. CONCLUSION

National policy guidance will be an essential element of any regulatory scheme designed to promote local services competition for the foreseeable future. By the passage of the 1996 Act, Congress "enacted...sweeping reforms" to "open local telecommunications markets to previously precluded competitors." After much delay brought about by the reluctance of the ILECs and RBOCs to comply with its terms, the 1996 Act is only beginning to produce significant benefits. While CLECs have driven the increasing availability of local exchange and advanced services, RBOC and ILEC obstructionist tactics in this regard are hampering CLEC efforts. Strict adherence to, support for and enforcement of the Act will foster the development of competition. Support for the FCC, the regulatory body charged with enforcement of the act, will foster development of competition. We can then rely on competition to drive investment and innovation. If, however, there are amendments to the Act in the form of Regulatory Relief for ILECs and RBOCs, there could be a significant cost: capital could dry up and competition in the local exchange and advanced services arena might not develop. It's not complicated. We have the 1996 Telecommunications Act in place. Let's enforce it. We have

a regulatory agency, the FCC, to administer the Act. Let's support them.

ENDNOTES

1 **NONRECURRING CHARGES AND FEES:** Anytime a customer made a change to his/her account, BellSouth charged TriVergent a Secondary Service Charge. These charges were incurred when a customer added or deleted an ancillary service such as call waiting and in almost every situation in which a customer altered his/her account. This cost TriVergent literally millions of dollars and hampered its ability to make an acceptable gross margin.

The charges BellSouth imposed on TriVergent varied from state to state despite the fact that all work performed by BellSouth to make the customer requested change was made in a single central office in Atlanta or Birmingham. The following list includes a breakdown of Secondary Service Charges on a state-by state basis:

Tennessee - \$17.00
Louisiana - \$13.94
Georgia - \$9.72
SC - \$4.51
Kentucky - \$12.55
NC - \$4.25
Florida - \$7.87
Alabama - \$6.80
Mississippi - \$7.65

Additionally, if BellSouth's OSS interfaces are electronic and user friendly as described by BellSouth, why does BellSouth charge the CLECs these amounts to make a change that should only require a software load?

To date, TriVergent has paid over \$2,000,000 in disputed Secondary Service charges that, generally speaking, BellSouth would and do waive for its own retail customers.

Monthly Minimum

When a customer signs up with TriVergent, we are forced to pay BellSouth a monthly minimum for all services ordered by that customer through TriVergent. The issues involved with these charges are more easily identified by way of the following example:

Customer A signs up with TriVergent on February 1, 1999. After a call from BellSouth, that customer makes a change back to BellSouth on February 15, 1999. Rather than bill TriVergent for the 15 days for which the customer was serviced through TriVergent, BellSouth bills TriVergent for a full month of service.

Realize that 95% of TriVergent's customers have been with BellSouth and are simply requesting a "change as is" order and all of these customers have already paid the initial one-month minimum. By making the change to TriVergent they are asked to pay an additional one-month minimum not by TriVergent, but by BellSouth. Additionally, when and if the customer switches back to BellSouth, they are asked to pay a third monthly minimum charge.

By way of example, please review documents included in ATTACHMENT A.

2 **FAILURE TO MEET FIRM ORDER CONFIRMATIONS:** BellSouth regularly ignored Firm Order Confirmations ("FOC") in provisioning orders for TriVergent customers. BellSouth's inability to complete the orders on time, if at all, severely crippled the company's ability to deliver quality customer service to our customers. Without this notification TriVergent had no record of order completion, requiring the Company to place a call to BellSouth after the due date. More importantly, the company lost the ability to complete the order on the due date and was forced to request a new, much later due date for the order, delaying provisioning for days.

By way of example, please review documents included in ATTACHMENT B.

DISCONNECTIONS AND INTERRUPTIONS IN SERVICE: Consumers that chose to switch to TriVergent and who, after signing up with TriVergent, contacted BellSouth for one reason or another - to request a final bill, ask about credits, or pay final invoices - reported that they lost service before TriVergent had provisioned the order through BellSouth.

By way of example, please review documents included in ATTACHMENT C.

PROVISIONING DIFFICULTIES AND DELAYS: BellSouth commonly delayed - sometimes for days on end - in provisioning orders for TriVergent customers while BellSouth representatives contacted those same individuals and promised that BellSouth would have the customer's service up and running as soon as possible. This type of discriminatory treatment significantly injured TriVergent's business.

By way of example, please review documents included in ATTACHMENT D.

5 **INVOICE DISPUTES:** The mechanisms in place for the resolution of disputes are inadequate. TriVergent issues a notice to BellSouth disputing specific charges included by BellSouth on the latest BellSouth invoice. In every instance it takes BellSouth months to issue a credit to TriVergent even though BellSouth has acknowledged the billing error when disputed. If TriVergent refuses to pay portions of its invoice, BellSouth threatens to stop provisioning TriVergent orders. Therefore, TriVergent is forced to pay out amounts that are not due to BellSouth and, in doing so, lose the ability to put these resources to better use for the Company while BellSouth hangs onto the funds for months until it issues a credit. BellSouth's failure to promptly credit TriVergent's account directly

and negatively impacts TriVergent's business plan and financials.

By way of example, please review documents included in ATTACHMENT E.

6 **ILLEGAL INTERACTION BY BELL SOUTH WITH TRIVERGENT**

COMMUNICATIONS CUSTOMERS: Reports from TriVergent customers and TriVergent customer service representatives indicate that (1) BellSouth continues to engage in improper activity with regard to provisioning TriVergent's orders and (2) BellSouth operators and representatives continue to make erroneous and inflammatory statements to TriVergent customers.

By way of example, please review documents included in ATTACHMENT F.

7 The Telecommunications Resellers Association study consists of a state-by-state analysis of two different business strategies over a five-year startup period: one solely using resale and one employing the UNE-platform approach. While the models utilizing the UNE-platform consistently generated revenues and margins, this was not the case with resale. The report determined that not a single state-authorized wholesale discount was capable of producing positive cash flow after five years. The findings prompted TRA to go a step further with the study and determine on a state-by-state basis the minimum discounts required by resellers to reach the breakpoint after five years of utilizing local resale as a stand alone business. The results found consistently large gaps between state-approved wholesale discounts and those needed to break even.

By way of example, please refer to documents included in ATTACHMENT G.

9 **COLLOCATION:** The following are some examples of situations TriVergent has run into in attempting to collocate with BellSouth and complete build out of its own facilities.

Space Availability Response Interval

BellSouth is required to provide a response to an application for collocation space within 10 business days as to whether space is available within a BellSouth central office premise. [Exhibit 2, Amendment to the Agreement between State Communications and BellSouth, Dated April 20, 1999, Page 4, Section 2.1, Availability of Space, Signed 7/28/99].

Below is a breakdown of BellSouth's average response interval per market:

Greenville – 37 days
Atlanta - 57-65 days
Greensboro – 37 days
Jacksonville - 49-69 days
Miami - 49-86 days

Charlotte – 19 days
Charleston – 37 days
Louisville – 40 days
Nashville – 35 days
Birmingham – 19 days
New Orleans - 42-49 days
Jackson – 30 days
Wilmington – 37 days

Application Cancellation

TriVergent submitted New Orleans collocation applications 6/17/99. BellSouth provided comprehensive responses, including price quotes on 8/17/99 and 8/25/99. TriVergent submitted Firm Orders 8/20/99 & 8/27/99. TriVergent notified BellSouth to cancel these applications 9/10/99 and requested a refund of any unused funds. TriVergent requested status of the cancellation and refund and was informed by Eddie Trant that no monies would be refunded. TriVergent escalated to the BellSouth Account Team 9/17/99 for resolution. BellSouth informed TriVergent 9/17/99 that the issue was under review. TriVergent requested resolution of this issue 9/24/99. TriVergent again requested BellSouth position 9/30/99. BellSouth responded to previous status inquiries 10/13/99 with the following "I feel nothing [sic]. It is like it has gone to the black hole of collo [sic]. Even Duane don't know [sic]." Eddie Trant, Regional Collocation manager. BellSouth offered to refund prepayments 10/14/99 or allow TriVergent to proceed with applications when cancelled if additional application fees were provided. 10/29/99 TriVergent resubmitted applications with fees totaling \$63,830.

Collocation Cage Construction Fees

BellSouth erroneously charged TriVergent for cage construction when it was clearly indicated on the collocation applications that TriVergent intended to construct its own cage. TriVergent requested a refund of these incorrect charges 9/13/99 totaling \$ 326,250. Despite several requests to BellSouth for a response to our refund request none has been received to date.

Power Feed Fees

Despite having charged an average of \$30,000 for power at collocation sites throughout Florida (38 collocation sites), BellSouth claims that TriVergent must provide its own power feeder cables from BellSouth' power distribution frame. Clearly BellSouth has included the provision of these services in the costs it has assessed TriVergent. TriVergent requested a clarification and/or refund of this incorrect assumption by BellSouth on 10/19/99 and has received no response other than they are looking into the issue.